RECENT DECISIONS

ATTACHMENT—MOTION TO DISSOLVE—WANT OF OWNERSHIP.—An attachment levy was made upon land as belonging to defendant, a non-resident, who under a special appearance moved to dissolve the attachment on the ground of his lack of interest in the property. *He'd,* the defendant cannot set up title in a stranger to defeat the attachment levy as upon his property. *Thornley* v. *Lawbaugh* (N. D.), 143 N. W. 348.

The rights of one having no interest in attached lands are not affected by its sale, hence the general rule is that defendant cannot object to attachment proceedings because of want of interest in the attached property. *Langdon* v. *Conklin,* 10 Ohio St. 439; *Mitchell* v. *Skinner,* 17 Kan. 563; *McDonald* v. *Marquardt,* 52 Neb. 820, 73 N. W. 288.

But this reasoning manifestly does not apply when the sole ground of attachment is non-residence. *Greenwood Gro. Co.* v. *Canadian Mill,* 72 S. C. 450, 52 S. E. 191, 2 L. R. A. (N. S.) 79 (*dictum*). A valid levy on the property of the defendant is the sole means of acquiring jurisdiction and if none of the defendant's property be levied upon, the court is without jurisdiction, regardless of what might be the effect of a judgment in such a case, and the defendant is a proper party to object. *Harris* v. *Taylor,* 35 Tenn. 536, 67 Am. Dec. 576; *Guild* v. *Richardson,* 23 Mass. 364; *Beasley* v. *Lennox-Hadleman Co.,* 116 Ga. 13, 42 S. E. 385. Since any action taken by the court is void and the court could, *ex mero motu,* dismiss the proceedings, the defendant should be allowed, as an *amicus curiæ,* to call the court's attention to the lack of jurisdiction and thus prevent a waste of public time and money.

BANKRUPTCY—ACTS OF BANKRUPTCY—APPOINTMENT OF RECEIVERS BECAUSE OF INSOLVENCY.—A petition in bankruptcy was filed against a debtor alleging as the act of bankruptcy, under § 3 a (4), the appointment, because of insolvency, of a receiver to take charge of the debtor's property. The ground of the appointment of the receiver was that the debtor was unable to meet his obligations as they matured in the ordinary course of business, and not that he was insolvent according to the bankruptcy definition. *Held,* the construction of the term insolvency, as used in § 3 a (4), is to be governed by the definition given in the bankruptcy act and not by the state rule as to insolvency. *Re Butler & Co.* (C. C. A.), 207 Fed. 705. See NOTES, p. 322.

BANKRUPTCY—JURISDICTION—INSOLVENCY.—The defendant applied for appointment of a receiver and thereupon the plaintiffs filed a petition in bankruptcy against the defendant, alleging insolvency because the title to certain property held by the debtor is fictitious and fraudulent. *Held,* the record title of the defendant will not be questioned by the court in order to reduce the assets for the purpose of showing insolvency. *Blackstone et al.* v. *Everybody's Store* (C. C. A.), 207 Fed. 752.

Here the petitioners, for the sake of proving insolvency, are not attempting to exclude property fraudulently transferred by the debtor,

but are objecting to the record title to property held by him. The transaction being voidable only at the instance of the creditors of the transferror, the creditors of the transferree will not be allowed to invoke the aid of the bankruptcy court by dis-establishing the title that is valid as between the debtor and the petitioning creditors. The decision involves a novel point and seems to be eminently sound.

BANKRUPTCY—PARTNERSHIP CREDITORS—PRIORITIES.—All the partners of a firm were insolvent and both the firm and the partners were in bankruptcy. There were no partnership assets. *Held,* the partnership creditors share *pari passu* with the separate creditors of one partner in the distribution of his estate. *Re Gray,* 208 Fed. 959.

When both the social and the individual assets are being administered by a court of equity the better rule is that the partnership creditors, after exhausting the partnership assets, can share *pari passu* with the individual creditors in the distribution of the individual assets. See NOTES, p. 135. But in view of the positive provisions of the bankruptcy act it seems that, without exception, the firm creditors should have priority in the social assets and the individual creditors in the individual assets. And so is the weight of authority. *Re Wilcox* 94 Fed. 84; *Re Henderson,* 79 C. C. A. 485, 149 Fed. 975; *Re Janes,* 67 C. C. A. 216, 113 Fed. 913. The Supreme Court has so far refused to examine the question. *McNabb* v. *Bank,* 198 U. S. 583.

CONFLICT OF LAWS—EVIDENCE—WHAT LAW GOVERNS.—A Pennsylvania statute made the by-laws of an insurance company inadmissible in evidence as part of an insurance policy, unless attached thereto. In an action brought in that state, it was necessary to determine whether a certificate of membership issued by an Alabama beneficial association came within the provisions of that statute. *Held,* the law of Pennsylvania determines whether the certificate comes within the provisions of the statute. *Marcus* v. *Heralds of Liberty* (Pa.), 88 Atl. 678.

All matters involving the evidence and the remedy are to be governed by the *lex fori. Downer* v. *Chesebrough,* 36 Conn. 39, 4 Am. Rep. 29; *Ruhe* v. *Buck,* 124 Mo. 178, 27 S. W. 412, 46 Am. St. Rep. 439, 25 L. R. A. 178; *Pritchard* v. *Norton,* 105 U. S. 124 (*dictum*). If a question is solely one of remedy and to determine it, it is necessary to ascertain the nature of the contract, then the *lex fori* is the law applied to determine the nature of such contract, so far as the question of remedy is concerned. *Thrasher* v. *Everhart,* 3 Gill & J. (Md.) 234; *Bank* v. *Donnally,* 8 Pet. (U. S.) 361; *LeRoy* v. *Beard,* 8 How. (U. S.) 451; MINOR CONF. LAWS, 506. Thus in *LeRoy* v. *Beard, supra,* a covenant was executed and to be performed in Wisconsin, which by the law of Wisconsin was under seal, but which the law of New York did not regard as under seal. Assumpsit being brought thereon in New York, it was held that assumpsit, not covenant, was the proper form of action in New York. The question in the principal case involved a matter of remedy, and the *lex fori* should have been applied to determine the na-